



Key NAGPRA Terms for Excavations and Inadvertent Discoveries

Aboriginal Lands: Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe. [43 CFR 10.6 (a)(2)(iii)]

Alaska Native village: See Indian Tribe.

Associated Funerary Objects: Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. [25 USC 3001 (3)(A)]

Burial Site: Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains are deposited. [25 USC 3001 (1)]

Claim: To demand as one's own or as one's right; to assert; to urge; to insist. A cause of action. Means by or through which claimant obtains possession or enjoyment of privilege or thing. Demand for ... property as of right. [Black's Law Dictionary, 6th Edition]

Claimant: A lineal descendant, Indian tribe, or Native Hawaiian organization who asserts a claim for cultural items pursuant to NAGPRA.

Cultural Affiliation: A relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group. [25 USC 3001 (2)]

Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion. [43 CFR 10.2 (e)] See also Preponderance of Evidence.

Cultural Items: Human remains, associated funerary objects, unassociated funerary objects, sacred objects, cultural patrimony [25 USC 3001 (3)]

Cultural Patrimony: An object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. [25 USC 3001 (3)(D)]

Culturally Unidentifiable: Cultural items for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined. [43 CFR 10.9 (d)(2)] See also Inventory of Culturally Unidentifiable Human Remains/Review Committee Inventory

Custody: As used at 43 CFR 10.3 – 6, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in [sic] Federal or tribal lands after November 16, 1990 [43 CFR 10.6 (a)]

Disposition: Act of disposing. Transferring to the care or possession of another. The parting with, alienation of, or giving up property. [Black's Law Dictionary, 6th Edition]. As used at 25 USC 3002 and 43 CFR Subpart B, the term refers to the return of cultural items excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, to lineal descendants, Indian Tribes, and Native Hawaiian organizations. The term disposition is also used at 25 USC 3006 (c)(5) with respect to the Review Committee's charge to recommend specific actions for developing a process for the disposition of culturally unidentifiable human remains.

Federal Agency: Any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution. [25 USC 3001 (4)]

Federal Agency Official: Any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations (43 CFR 10). [43 CFR 10.2 (a)(2)]

Federal Lands: Any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971. [25 USC 3001 (5)]

Any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act. United States "control" refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations (43 CFR 10) without abrogating the otherwise existing legal rights of a person. [43 CFR 10.2 (f)(1)]

Human Remains: The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered as part of that item. [43 CFR 10.2 (d)(1)]

Inadvertent Discovery: The unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of NAGPRA. [43 CFR 10.2 (g)(4)]

Indian Tribe: Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. [25 USC 3001 (7)]

Indian Tribe Official: The principal leader of an Indian Tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations (43 CFR 10). [43 CFR 10.2 (b)(4)]

Intentional Excavation: The planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of the Act. [43 CFR 10.2 (g)(3)]

Lineal Descendant: An individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance [sic] to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations. [43 CFR 10.2 (b)(1)]

Native American: Of, or relating to, a tribe, people, or culture that is indigenous to the United States. [25 USC 3001 (9)]

Of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii. [43 CFR 10.2 (d)]

Native Hawaiian: Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. [25 USC 3001 (10)]

Native Hawaiian Organization: Any organization which serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei. [25 USC 3001 (11)]

Notice of Intended Disposition: A Notice of Intended Disposition is published in newspapers by the Federal agency official responsible for cultural items excavated or removed from Federal lands. Such notification is required pursuant to 43 CFR 10.7 (c). The Federal agency official sends copies of published Notices of Intended Disposition to the National NAGPRA Program.

Objects of Cultural Patrimony: See Cultural Patrimony.

Physical Custody: The definition of custody in Black's Law Dictionary [6th Edition] distinguishes between immediate charge and absolute ownership: "Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody." In NAGPRA, physical custody means having immediate charge of Native American cultural items regardless of whether or not one has sufficient legal interest to lawfully treat the objects as part of one's collections. See also Control and Possession.

Preponderance of Evidence: As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. [Black's Law Dictionary, 6th Edition]

Sacred Objects: Specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. [25 USC 3001 (3)(C)]

Traditional Native American Religious Leader/Traditional Religious Leader: A person who is recognized by members of an Indian tribe or Native Hawaiian organization as: 1) being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or 2) exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices. [43 CFR 10.2 (d)(3)]

Tribal Land: All lands within the exterior boundaries of any Indian reservation; all dependent Indian communities; any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3. [25 USC 3001 (15)]

All lands which are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6). Actions authorized or required under these regulations [43 CFR 10] will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution. [43 CFR 10.2 (f)(2)]

Unassociated Funerary Objects: Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe. [25 USC 3001 (3)(B)]

Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. [43 CFR 10.2 (d)(2)(ii)]